

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1288 of 2008

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Union of India Through G.M. Eastern Railway, 17 Netaji Subhas Road, Kolkata-700001.

.... Petitioner/s

Versus

Gobind Chandra Chakravarty, son of late Haran Chandra Chakravarty, resident of Baddipara, P.O. and P.S. Jamalpur, District-Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. BIJOY KUMAR SINHA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-03-2016

Heard Mr. D.K. Sinha, the learned senior counsel appearing on behalf of the petitioner. Nobody has appeared on behalf of the sole opposite party when the matter has been called out for hearing. It appears that at the time of admission of this revision application the sole opposite party has already appeared.

This revision application has been filed against the order dated 20.05.2008 passed in Title Execution Case No. 10 of 1985 by which the executing court below has dismissed the petition dated 03.07.2004 filed under Section 47 C.P.C. by the judgment-debtor-petitioner.

The Title Suit No. 39 of 1969 was filed by the sole opposite party for declaration that he was entitled to be absorbed



under regular scale of pay with effect from the date of his transfer to Menari and the subsequent action of the railway authorities were illegal and without jurisdiction. The relief was also prayed for declaration of entitlement of full pay, wages and emoluments from the date of the plaintiff's transfer to Menari up to the decision of the suit and also the future pay, wages and emoluments. It would be relevant to take into notice that during the pendency of the suit, the plaintiff-opposite party abandoned his relief relating to the claim of pay and wages, and pursued the suit only with regard to the first relief of his entitlement to regular scale of the pay with effect from the date of his transfer to Menari and for declaration that subsequent action of the railway authorities were illegal and without jurisdiction. This fact is also apparent from the judgment dated 18.07.1978 passed in T.S. No. 39 of 1969 wherein in the first paragraph it has been stated that the plaintiff left the claim of pay and wanted single declaration that the actions of the railway authorities were illegal, inoperative, ultravires, unconstitutional and without jurisdiction. However, while granting the decree to the plaintiff, in the operative part of the judgment, it was held that the plaintiff was also entitled to the full pay and wages in emolument and re-instatement in service besides also holding the plaintiff to be entitled for the cost of the suit. The plaintiff thereafter filed title execution case no. 10 of 1985 praying for execution of the

decree also with regard to the payment of full pay and wages.

From the perusal of the execution petition (Annexure-3), it transpires that in schedule-A of the petition it was mentioned that Rs. 149000.00 was the quantification of the claim of the plaintiff with regard to the pay, wages and emoluments etc. from 28.06.1967 up to March 1985. Without going into further details relating to the filing of the earlier petitions by the judgment-debtor-petitioner, it would be suffice to take into notice that the attachment order was passed against the petitioner and the petition under Section 47 C.P.C. filed by the petitioner was also dismissed by order dated 17.07.2004 by the executing court which was assailed by the petitioner before this Court by filing C.R. No. 1128 of 2004. It appears from the order dated 18.01.2008 (Annexure-8) passed in the said revision application that this Court took into notice the filing of the cheque for the amount claimed by the opposite party in the execution case and thereafter it was held as follows:-

“.....Considering the facts and circumstances of the case as well as the materials on record it is quite apparent that the amount of dues as well as period of dues was not at all clear from the judgment and decree of the trial court. It is also apparent that before the order of attachment was passed, the judgment debtor-petitioner had not appeared in the execution case and had no

knowledge about the same. Filing of the cheque worth decretal amount for the purpose of saving his property from attachment does not take away his right to file a petition under Section 47 of the Code of Civil Procedure.....

In the said circumstances, the impugned order of the learned court below cannot be sustained in law and the learned court below has clearly committed a jurisdictional error by not deciding the issues raised by the judgment debtor-petitioner.

Hench, this civil revision is allowed, the impugned order is set aside and the learned court below is directed to consider the petition of the judgment-debtor-petitioner filed under the provision of Section 47 of the Code of Civil Procedure on merits expeditiously, preferably within a period of two months from the date of receipt/production of a copy of this order.....”

It appears, therefore, from the aforesaid order of this Court that the direction was issued to the executing court below to consider the objection raised by the judgment-debtor-petitioner in the petition filed under Section 47 C.P.C. relating to the executability discharge and satisfaction of the decree. From the perusal of the fact mentioned in the judgment of the suit filed by the plaintiff-opposite party that the relief with regard to the claim of pay and wages stood



abandoned, there was obviously no issue framed in the suit in that regard and there was no opportunity to the defendant-judgment debtor to lead evidence before the court to ascertain and quantify the claim of the plaintiff-opposite party therein with regard to the said claim. It is also demonstrable from the said judgment that no quantification was done in the judgment in this regard and no basis for such quantification was also indicated or mentioned therein. In the execution proceeding, it appears from the impugned order that the plaintiff has given his own calculation quantifying his claim in this regard to Rs. 149,000.00 whereas the judgment-debtor-petitioner has furnished the calculation of the pay, wages and emoluments of the plaintiff-opposite parties to be Rs. 12851.60.

From the perusal of the impugned order, it appears that the learned court below instead of considering the assertions made in the petition under Section 47 C.P.C., as directed by this Court earlier as abovementioned, has proceeded to uphold the claim of Rs. 149,000.00 as made by the opposite party primarily on the basis that the said amount had been calculated by the court as per the order dated 20.05.1986. From the perusal of the earlier orders of the execution proceeding, it does not appear that by order dated 20.05.1986 any such calculation was made by the executing court or by any court for that matter. It also further appears from the



impugned order that the learned court below has proceeded on the basis that the judgment-debtor-petitioner before it had given his consent and expressed his readiness to pay the aforesaid amount to the decree-holder opposite party. This finding is manifestly against the directions issued by this Court in the previous revision application holding that the filing of the cheque worth decretal amount for the purpose of saving the property from attachment would not take away the right of the judgment-debtor to file a petition under Section 47 C.P.C. The learned court below, therefore, has definitely committed error of jurisdiction in dismissing the petition filed under Section 47 C.P.C. by the petitioner upholding the claim of Rs. 149,000.00 as made by the opposite party, by mainly relying upon the calculation given by the opposite party and corroborating the same by stating that the court had made the said calculation by order dated 22.05.1986 which fact is demonstrably incorrect as found earlier.

It is also relevant to take into notice that the opposite party had abandoned his pay, wages and emoluments etc. in the suit which fact is also apparent from the judgment passed in the said suit. In this backdrop, the opposite party is definitely trying to take benefit of the last operative part of the judgment where his entitlement to the pay and emoluments etc. was declared. Though, the petitioner had

not challenged the said decree to that extent but still the executing court has also committed error of jurisdiction in relying solely upon the claim and calculation as furnished by the opposite party discarding the calculation in this regard furnished by the petitioner even after the direction by this Court to consider the petition filed under Section 47 C.P.C. by the petitioner. This Court, therefore, comes to the conclusion that the learned court below has committed error of jurisdiction in not recording a finding on the rival claims of the parties, in accordance with law.

Accordingly, this revision application is allowed. The impugned order is set aside and the matter is remitted back to the executing court below for passing order afresh on the petition date 03.07.2004 filed by the petitioner under Section 47 C.P.C. in accordance with law after granting opportunity of hearing to the parties.

The revision application is, accordingly, allowed with directions.

(V. Nath, J)

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